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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/007,019	01/14/1998	ERIC C. ANDERSON	04860PO686C2	4416

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EXAMINER

LAO, SUE X

ART UNIT	PAPER NUMBER
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2126

DATE MAILED: 03/27/2003

7 2

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/007,019

Applicant(s)

Anderson, et al

Examiner

S. Lao

Art Unit

2126

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-19, and 56-63 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-19, and 56-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

### DETAILED ACTION

1. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 1-4, 6-19, 56-63 are presented for examination. This action is in response to the preliminary amendments A, B and C originally filed 1/14/1998, 6/25/1998 and 7/30/2001, respectively. Applicant has amended claims 1, 9, 10, 16-19 in amendment A; canceled claims 20-55 in amendment B; amended claims 1, 4, 10, 18 and 19, canceled claim 5 and added claims 56-63 in amendment C. Under Rule 1.126, claims 20-27 filed with amendment C have been renumbered as claims 56-63, respectively.

3. The non-statutory double patenting rejection, whether of the obviousness-type or non-obviousness-type, is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent. *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); and *In re Goodman*, 29 USPQ2d 2010 (Fed. Cir. 1993).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) and © may be used to overcome an actual or provisional rejection based on a non-statutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.78(d).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-4, 6-19, 56-63 are rejected under the judicially created doctrine of obviousness - type double patenting as being unpatentable over claims 2-5 of U.S. Patent No. 5,448,735 in view of Frankel et al (U. S. Pat. 5,283,900). For example, the skip value/count as recited in claims 1, 9, 10, 16-19 and 57 of the present application is met by the skipcount value of claim 2 of U.S. Patent No. 5,448,735, terminating of claims 9 and 18 of the present application is met by terminating of claim 3 of U.S. Patent No. 5,448,735, and modifying of claims 7, 8, 14, 15, 59 and 60 of the present application is met by changing of claim 4 of U.S. Patent No. 5,448,735. However, claims 2-5 of U.S. Patent No. 5,448,735 do not teach that a module includes a DSP data structure, which is taught by Frankel wherein each task being scheduled includes a DSP data structure (low level objects, col. 2, lines 10-28; col. 8, line 17 - col. 9, line 4).

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4, 6-19, 56-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hira et al (U. S. Pat. 4,954,948) in view of Frankel et al (U. S. Pat. 5,283,900).

As to claims 10, 17 and 57, Hira teaches (variable COUNT) first set of executable modules (first task 40, second task 50) sequentially associated with one another (ordered), executing a first module (execute first task 40), determining (36) a skip value associated with (assigned, col. 7, lines 56-57) the first module (COUNT is equal to 1), proceeding to

execute a subsequent module (second task 50) indicated by said skip value (COUNT is equal to 2). See col. 3, line 55 - col. 4, line 29, col. 7, lines 56-57.

While Hira teaches the scheduling/tasks are real-time scheduling/tasks (vehicle control, col. 7, line 65 - col. 8, line 5), Hira does not teach that each module comprises at least one DSP data structure.

Frankel teaches scheduling real-time modules/tasks, wherein each task/module includes at least one DSP data structure (low level objects) (col. 6, line 45 - col. 7, line 48; col. 8, line 17 - col. 9, line 4). Given the teaching of Frankel, it would have been obvious to include at least one DSP data structure into each module of Hira. In so doing, both programming and operating efficiency would have been improved. (Frankel, col. 2, lines 28-35).

As to claims 1 and 16, note discussion of claims 10 and 17, and the equivalence of first sequence / first set (claim 10). Hira further teaches storing skip value indicating a next module in each module (assign COUNT variable to each particular module) (col. 7, lines 56-57).

As to claim 9, note discussion of claims 10 and 17, and Hira further teaches integer N (1), skip to N+1th module (2nd task). Assigning N to be less than zero to indicate a termination would have been obvious since Hira associates integers>0 with valid executable tasks (first task, second task, Kth task) and accordingly integers<0 would have been associated with invalid/non-executable tasks, which would have resulted in a termination of execution.

As to claim 18, note discussion of claims 9 and 10, and Hira further teaches when the skip value N is greater or equal to zero (COUNT being 1), proceed to N+1th module (2nd task) (see discussion of claim 1).

As to claim 19, it is covered by claims 1 and 9.

As to claim 2, note discussion of claim 9.

As to claims 3, 63, note discussion of claim 9.

As to claims 4, 61, Hira teaches second sequence and second sequence becoming the first sequence / executing in that the system of Hira is a multi-tasking system which includes multiple tasks and control is passed from one task to another.

As to claim 5, Hira teaches tasks are linked with one another (process control block, inherent to the operating system of Hira).

As to claims 6-8, 59, 60, 62, Hira teaches performing skip action (COUNT is equal to K, col. 7, lines 36-37), created by previous iteration (incrementing), modified by a module associated with (executing task increments COUNT to indicate the next task to be executed), modified by a host associated with (COUNT initialized by microprocessor, transmitted by bus). See col. 5, lines 10-12; col. 7, lines 1-3; col. 3, lines 61-64; col. 6, lines 35-54.

As to claims 11 and 12, note discussions of claims 2 and 3, respectively.

As to claims 13, 58, Hira teaches a datum associated with (variable COUNT).

As to claims 14-15, note discussions of claims 8 and 7, respectively.

As to claim 56, it is covered by claim 10, element b.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue Lao whose telephone number is (703) 305-9657. A voice mail service is also available at this number. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-9051 for regular communications and After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.

Sue Lao



March 21, 2003